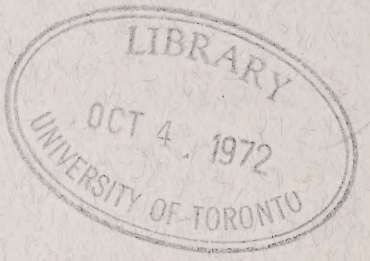
THE CANADIAN CHAMBER OF COMMERCE

SUBMISSION
on the

CANADA DEVELOPMENT CORPORATION

MAY 1971



The Canadian Chamber of Commerce is the national voluntary federation of some 800 autonomous Boards of Trade and Chambers of Commerce (the terms are synonymous) in communities throughout Canada. These community organizations, which make the decisions as to the policies of The Canadian Chamber of Commerce, exist to promote civic, commercial, industrial, and agricultural progress in the areas in which they operate and to promote good government at all levels.

In addition, the Chamber's membership includes some 2700 business firms and subsidiaries, comprising all sizes and types of enterprise across Canada, as well as 30 national trade, business and professional associations.

SUBMISSION

REGARDING BILL C-219

AN ACT TO ESTABLISH THE CANADA DEVELOPMENT CORPORATION

to the

House of Commons Standing Committee
on Finance, Trade and Economic Affairs

by the

Executive Council

of

THE CANADIAN CHAMBER OF COMMERCE

MAY 1971

THE CANADIAN CHAMBER OF COMMERCE

OFFICE OF THE CHAIRMAN
OF THE EXECUTIVE

Mr. Gaston Clermont, M.P.,
Chairman,
House of Commons Standing Committee on
Finance, Trade and Economic Affairs,
Ottawa.

Dear Mr. Clermont:

The Executive Council of The Canadian Chamber of Commerce welcomes this opportunity to present to the House of Commons Standing Committee on Finance, Trade and Economic Affairs its views on Bill C-219, An Act to establish the Canada Development Corporation.

This submission is presented in the name of, and on behalf of, the Executive Council which is appointed by the National Board of Directors to carry on the Chamber's day to day business. The Executive Council, in turn, appoints special committees to recommend action on various aspects of the Chamber's activities, including legislative matters. One of these committees was responsible for the preparation of this brief.

We hope that this presentation of our comments and recommendations makes clear our desire to assist your Standing Committee, to the best of our ability, in carrying out its study of Bill C-219. To this end, we offer any further assistance that you may call upon us to provide with regard to additional information or, perhaps, suggestions for redrafting of parts of the Bill.

Respectfully submitted,

R. K. Carty

R. Kenneth Carty,
Chairman, Executive Council

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SUMMARY AND RECOMMENDATIONS

In its official Policy Statement of September 30, 1970, The Canadian Chamber of Commerce expressed the view that the Canada Development Corporation should not be proceeded with. Nevertheless, as the government clearly intends to establish the CDC, the Chamber is making this submission (without prejudice to its consideration of a new Statement of Policy) with the desire to cooperate in the achievement of legislation that will be as satisfactory as possible.

INVESTMENT POLICY (Refer Page 6)

It is the Chamber's contention that many of the concerns, doubts and objections, which the business and financial communities have voiced with respect to the CDC, would be eliminated by a clearer and more complete statement of objects and policy in the Bill, itself.

It is also contended that the proposed CDC policy to promote greater Canadian control of its economy while, at the same time, to maximize economic return may lead to conflicts between these objectives. Foreign, and particularly U.S., interests are willing to pay a premium for shares of Canadian companies in the raw materials and technology fields. Therefore, in order to avoid paying excessive prices for such interests in open bidding, the CDC will have to become involved in joint ventures with foreign concerns. Government policy with respect to foreign ownership remains to be enunciated and a great deal of public uncertainty exists in this regard. Moreover, it is unclear what role the CDC is expected to assume in connection with such policy when announced, or, to what extent it might become an instrument of government policy in general.

Recommendations

—That a concise and unequivocal statement of CDC investment policy and its role in ensuring Canadian control be included in the Bill.

—That such a statement of policy include provisions limiting CDC investments to profitable or potentially profitable and sound situations.

—That the CDC's freedom from government direction be clearly stated in the Bill.

OPERATING CONTROL (Refer Page 9)

The Department of Finance has stated that the CDC will not generally seek direct operating control of corporations in which it invests and that they will not normally become subsidiaries. In addition, Government spokesmen have emphasized the CDC's "catalytic" role, as well as its "transitional" aspect and "conduit" function to funnel its entrepreneurial results back into the private sector. Yet, nothing in the Bill covers these objectives.

Recommendations

—That there be stated in the Bill a CDC objective to distribute to the public shares of enterprises that have been brought to a satisfactory stage of viability whenever, in the opinion of the directors, such distribution would not be inconsistent with the maintenance of Canadian control and the shareholders' best interests.

—That a full prospectus be issued upon the formation of the CDC, to contain all the necessary ancillary information regarding objects and policy that it might not be feasible to include in the Bill.

LEGISLATIVE CONSISTENCY (Refer Page 11)

The Chamber maintains that the Bill departs to too great an extent from the practical consistency that has come to be expected in special legislation covering a variety of classes of Canadian industries. It also contends that the Bill provides, or may permit, too many advantages for the CDC as compared with other entrepreneurial organizations in the private sector.

Recommendations

—That the Bill be simplified by minimizing departures from the Canada Corporations Act to the greatest extent possible.

—That the Canada Corporations Act be amended, as soon as possible, to incorporate the right of all companies to purchase their shares out of surplus, as well as such tax and other advantages as the CDC is permitted.

—That all other corporations be assured equal treatment, as compared with the CDC, in the administration of Canadian competition policy.

MARKETABILITY OF SHARES (Refer Page 14)

Successful public distribution of CDC shares, in the Chamber's view, will depend largely on minimizing the special provisions and restrictions that relate to these shares. It is maintained that provisions of the Bill relating to the acquisition, holding, voting, transfer and redemption of shares may constitute insurmountable impediments to satisfactory marketability.

Recommendations

—That the CDC be declared a "constrained share company", in accordance with Section 38A of the Canada Corporations Act and related Schedule.

—In such event, that the constrained-class be preferably only "non-resident", or both "non-resident" and "non-citizen", and that the gross prescribed percentage of shares permitted to be held by such class be preferably 25%, but no less than 15%.

—That actual public issues of shares be restricted to residents of Canada or Canadian citizens.

GOVERNMENT PARTICIPATION (Refer Page 17)

The Chamber is not in agreement with the Bill's provisions relating to redemption of government-held shares and their re-issue to the public, nor does it deem equitable or practical the use of net asset value as a measure of redemption price. Moreover, it is contended that the shares to be purchased by the government within the first three years should be of a different class than those subsequently issued to the public.

Recommendations

—That the $250 million worth of shares to be purchased directly by the government within the first three years be a special class of convertible, redeemable, deferred-dividend common shares.

—That, when the CDC has achieved a proven performance record, the above class of shares be redeemed, converted into ordinary common shares, and re-issued to the public at an acceptable price.

—That other common shares acquired by the government, in exchange for the sale of Crown companies, be distributed to the public by way of secondary offerings at appropriate times.

—That net asset value not be used as a measure of redemption price and that it be determined no more often than on a monthly basis.

INTRODUCTION

Policy Statements of The Canadian Chamber of Commerce (hereinafter referred to as the Chamber) are adopted at its Annual Meetings each September and may be considered to be a reasonable consensus of the views of its membership. Nevertheless, it must be realized that the democratic process of the evolution of policy proposals, and their referral to Annual Meetings, is time-consuming and necessitates organized scheduling.

It is generally known that the Chamber has not favoured the formation of the Canada Development Corporation. In fact, its Policy Statement on this subject in September, 1970 was as follows:

> "It has not been demonstrated that the Canada Development Corporation fulfills an economic need in Canada at the present time or that its proposed methods of financing or operating are practicable. (It can be questioned that there is an entrepreneurial gap or a gap in our capital market and, if there are such gaps, that the Canada Development Corporation is the best way of closing the gaps.) It is submitted that a full exploration should be conducted into the use of fiscal policy to encourage savings and their investment by Canadians in Canadian equity securities. The Chamber, therefore, is of the view that the Canada Development Corporation should not be proceeded with".

Introduction of Bill C-219 on January 25th by the Minister of Finance clearly indicated the government's intention to proceed with the project. The contents of the Bill, itself, and the Minister's explanations have eliminated some uncertainties. However, it must inevitably be some time before the Chamber, through its normal procedures, is able to consider formulating and adopting a revised official Statement of Policy on this matter.

Therefore, the Chamber is making this submission without prejudice to its final action on a new Statement of Policy and with the desire to cooperate in the achievement of legislation that will be as satisfactory as possible.

In addition, it is our desire that the legislation include such essential guidelines, protections and assurances as to enable the proposed CDC to work cooperatively with the private sector in pursuit of its objectives, without undue advantages as compared with other Canadian investor-owned enterprises.

Finally, we believe it to be essential that provisions of the legislation assure satisfactory marketability of CDC shares if, and when, they are issued to the Canadian public.

In this main part of our brief, we wish to concentrate on a few important matters of principle in rather broad terms, including some positive suggestions, under the following headings:

— Investment Policy
— Operating Control
— Legislative Consistency
— Marketability of Shares
— Government Participation

Comment on a number of technical and legal aspects of the Bill, which in our view merit consideration, are submitted in an Appendix.

INVESTMENT POLICY

It is the Chamber's contention that many of the concerns, doubts and objections, which the business and financial communities have voiced with respect to the CDC, would be eliminated by a clearer and more complete statement of objects and policy in the Bill, itself. In short, we believe that in order to enhance the possibility of greater cooperation and support for the CDC on the part of the said business and financial elements of Canadian society, the project must be adequately described and presented.

It should be recognized that the proposed policy of the CDC to promote and encourage the ownership in Canada of Canadian industry and, at the same time, to do this on a basis which is consistent with traditional private capital concepts of economic return, is going to lead to difficult conflicts between these objectives. This is seen most clearly if some of the reasons for foreign investment in Canada are understood. In this con-

nection, the CDC will be obliged to focus on why foreign corporations are willing to pay a premium to buy these same Canadian industries.

In the high technology fields, Canadian corporations appear to have a premium value to American and other companies in the same fields because of economic advantages inherent in utilizing and exchanging techniques. There is inherent in such relationships a value in integration which puts a premium on the shares of these companies to a particular buyer who is in the same line of business and who can more effectively exploit the use of their patents and techniques through a new outlet. The Canadian sellers, of course, may desire the relationship to get that kind of backing and support to meet competition in the Canadian market.

In the raw materials fields, American and other foreign companies need long-range raw material reserves and, to this degree, are willing to pay a premium for shares of Canadian companies with such reserves. A Canadian investor in such companies finds little present value in the long-term aspects of the reserves but must look to their present utilization to justify his investment. Therefore, he is amenable to selling at a premium.

Should the CDC wish to acquire substantial interests in such companies to avoid foreign ownership, it will be faced with the prospect, in open bidding, of paying a premium which has no worth in itself. The CDC will not be able to realize such integrated values in the high technology and raw materials industries unless it contemplates some form of joint-venture ownership.

This suggests to us that the CDC will be effective in the fields of most popular concern only if it can evolve a policy of joint ownership with significant foreign concerns rather than a policy of Canadian exclusivity.

Mr. Martin O'Connell (Parliamentary Secretary to the Minister of Regional Economic Expansion) discussed this subject at some length, as reported on pages 3673 to 3675 of Hansard (Feb. 23). However, there is a hint of possible coercion of foreign interests with Canadian operations in some of his remarks:

> "Another important role to be expected of this corporation is that which relates to the international field . . . We need a corporation which is concerned with rationalizing Canadian units of production and forming them, when this is desirable, into larger corporate structures. More important still, such a corporation should be taking them out into the world economy, into the international market. It would be well to lay great stress on this aspect of the corporation's activities. The CDC could play an extremely important role in the international field by testing the Canadian orientation of some of the subsidiaries of United States companies which operate in Canada, making it clear whether they were operating solely as branch plants or as corporations with some degree of autonomy . . . Are they subject to market sharing arrangements imposed by the parent company and then restricted to the Canadian market? We do not really know. Guidelines are not enough. One of the functions of the Canada Development Corporation, as I see it, would be to test the Canadian performance and orientation of subsidiaries in our economy by offering to join with them to go out competitively into world markets. In this way, we could find out whether they will go. If they will not, then we do have a case, and we will have to deal with that particular case. We will have an instrument to do so in the Canada Development Corporation . . ."

Nothing is stated in the Bill, itself, on the subject of the CDC's role with regard to foreign ownership in Canada. The Department of Finance News Release said only;

> "Whether its investments are made independently or in concert with other corporations, they will aim at ensuring Canadian control".

It is understood that the forthcoming Gray report on foreign ownership will not be available for some months. Yet, it is our belief that these findings would greatly assist in the determination of CDC policy. In the meantime, we have had the Denison Mines situation and, now, the question of the future of Home Oil. Understandably, there is no little uncertainty as to what will be the CDC role in such matters, particularly in view of assurances that it will be an autonomous organization, free from political pressures and interference.

Reference is made to the Australian Industry Development Corporation Act 1970. This contains some practical investment policy provisions, including the following:

- The Corporation shall pursue a policy directed to securing, to the greatest extent practicable, participation by Australian residents in the ownership of the capital and in the control of companies to which it provides assistance.

- The Corporation shall act in accordance with sound business principles and shall not provide assistance in relation to a particular company unless it is satisfied that the company will operate on a profitable basis.

- In the exercise of its powers the Corporation is not subject to direction by or on behalf of the Commonwealth.

It is the Chamber's contention that inclusion of some provisions such as these in Bill C-219 would do much to gain public acceptance of the proposed CDC legislation.

Recommendations

—That a concise and unequivocal statement of CDC investment policy and its role in ensuring Canadian control of the Canadian economy be included in the Bill.

—That such a statement of policy include provisions limiting CDC investments to profitable or potentially profitable and sound situations.

—That the CDC's freedom from government direction be clearly stated in the Bill.

OPERATING CONTROL

The Department of Finance News Release stated:

> "Generally, the CDC will not seek to exercise direct operating control of the corporations in which it invests and they will therefore not normally become CDC subsidiaries".

Mr. Martin O'Connell, in his speech as reported on page 3673 of Hansard, went a bit further:

> "I am particularly happy that the corporation is not to seek operational control except in cases where it initiates and carries out the entrepreneurial function itself. In the normal course of events, one would expect to find this corporation linking itself to the business enterprises of Canadian corporations and, indeed, of foreign corporations in joint ventures. In these circumstances it needs to exercise its influence to see that the national interest is in fact being observed in the pursuit of profit, even though it does not exert overall management control. I am happy to note the observation of the Minister of Finance that the entrepreneurial function will be, for the most part, discharged by others but that it will, if necessary, be discharged by the corporation".

Here, again, is the indication that national interest and even perhaps government policy might require the CDC, "if necessary", to exert in some cases considerably more than a minority shareholder's role.

It has been the experience of a number of Canadian holding companies that a minority role often carries very little weight, particularly when faced with a firmly-entrenched management enjoying a long record of general shareholder support. On the other hand, there are cases where a relatively small-percentage holding results in effective control. Also, there has been a recent tendency for holding companies, in seeking to maximize their effectiveness, to consolidate holdings in majority interests. In such cases, managements and operations of the various affiliates can be better coordinated and supervised.

Another commentator on the CDC's operating role, Mr. Barnett J. Danson (Parliamentary Secretary to the Prime Minister) had this to say, as reported on page 3668 of Hansard (Feb. 23):

> "I am delighted to see the transitional aspect of the CDC emphasized. This allows the CDC to operate with a maximum degree of freedom, largely as a catalyst to bring situations together and as a conduit to funnel the results back into the private sector".

This entrepreneurial aspect of the CDC's function also has been commented on by Mr. Benson and others. Yet, nothing in the Bill hints at this important objective. Again, we respectfully submit that the Australian Industry Development Corporation Act contains certain relevant provisions, something similar to which would greatly clarify Bill C-219:

- The Corporation shall endeavour, so far as practicable, to avoid becoming or remaining in a position where it is able to control or manage the affairs of a company to which it provides assistance.

- Where the Corporation holds a substantial number of shares in a company and the Board is satisfied that retention of such shares is not necessary for the proper performance of the Corporation's functions with due regard to its required policy, it shall endeavour to sell such shares. (This does not require the corporation to sell such shares at a loss.)

Recommendations

—That a statement be included in the objects section of the Bill on the CDC's "conduit" function. This could state the objective of distributing to the public shares of enterprises that it has brought to a satisfactory stage of viability whenever, in the opinion of the directors, such distribution would not be inconsistent with the maintenance of Canadian control and the shareholders' best interests.

—That a full prospectus be issued upon the formation of the CDC. It is our contention that such a prospectus could contain all the necessary ancillary information regarding objects and policy that it might not be feasible to include in the Bill.

LEGISLATIVE CONSISTENCY

Canadian banks, trust companies, insurance companies and loan companies are subject to special Acts. This is understandable and quite proper due to the particular natures of these various classes of corporate activities and the kinds of services rendered.

On reading through these various Acts, one notices a certain consistency. Moreover, there appears to be a rationale for the special provisions that relate to each class of enterprise. The importance of legislative consistency and simplicity has been recognized in the recent Report of the Study Committee on Bankruptcy and Insolvency Legislation. This contains a recommendation that bankruptcy and insolvency matters be eliminated from a number of special acts and covered for these classes of corporations by the Bankruptcy Act.

However, in Bill C-219 there are numerous examples where rather drastic departures from seemingly practical uniformity are evident. In this connection, the Chamber suggests that the Bill be greatly simplified and that exclusions from, and additions to, the provisions of the Canada Corporations Act be made only where such changes are absolutely essential. It is our view that the more uniform the legislative treatment of the CDC, as compared with competitive federally chartered corporations, the greater will be its public acceptance and chances of success.

The CDC will be competing with other Canadian entrepreneurial organizations for capital and for markets, as well as in the field of merger and acquisition activity. Yet the Bill provides the CDC with a number of advantages including, for example, the right to purchase its shares in the market out of surplus (Section 23) and certain income tax advantages (Section 33). In discussing the share purchase right, Mr. Benson is reported, on page 3639 of Hansard (Feb. 22), to have said:

> "The provision, if implemented by the board, would improve the ultimate marketability of the corporation's shares. Such a provision is contained in the new Ontario Business Corporations Act and is being considered for the Canada Corporations Act. This power has been available to companies in the United States for some time".

Canadian holding and closed-end investment companies have long sought such a right, urging that without this and other incentives they were unable to market new issues of shares. Yet, Bill C-219 immediately places them at a relative disadvantage.

With regard to tax advantages, Mr. Danson said the following in his CDC speech while commenting on "the entrepreneurial spirit which motivates so many enterprises" as reported on page 3668 of Hansard:

> "Business will adapt to reasonable laws and economic climate as well as tax systems knowing that its competitors face the same sets of rules".

Another matter of grave concern relates to acquisition activity and the implications of the anticipated amendments to the Combines Investigation Act. The Honourable Marcel Lambert remarked on this subject, as reported on page 3642 of Hansard (Feb. 22):

> "If there are to be mergers, amalgamations and rationalizations, what about the risks from a combines investigation? . . . This is a real problem . . . The CDC would look rather silly if it entered into some sort of policy to provide the funds of a merger and the court declared it to be illegal".

Perhaps in reply to the above, Mr. O'Connell made the following remarks, as reported on page 3674:

> "Naturally, the functions of the Canada Development Corporation will have to be related in this respect to the Combines Investigation Act or to competition policy in Canada. I trust that we will be able to so arrange our affairs in respect of combines and mergers that we will not be standing in the way of the coming together of many Canadian corporations so that bigger units may be formed in order to face the facts of economic life in the world economy".

Our concern is not the danger of a CDC sponsored merger being found illegal. It relates to the government appointed "Tribunal" which is expected to replace the courts as sole arbiter of Canadian competition policy. There is a very real fear that, without special safeguards, the CDC is bound to obtain preferential treatment in relation to that received by its competitors. Such decisions could easily be rationalized as being in the national interest.

Recommendations

—That the Bill be simplified by minimizing departures from the Canada Corporations Act to the greatest extent possible.

—That the Canada Corporations Act be amended, as soon as possible, to incorporate the right of all companies to purchase their shares out of surplus, as well as such tax and other advantages as the CDC is permitted.

—That all other corporations be assured equal treatment, as compared with the CDC, in the administration of Canadian competition policy.

MARKETABILITY OF SHARES

According to the Department of Finance News Release:

> "It is a principal objective to have CDC shares widely held. Shares will be sold to the public in competition with all other investment vehicles . . ."

Yet, it is respectfully submitted that the problems which are bound to result from the restrictions and complexities of certain requirements of the Bill may prove insurmountable and, in fact, that CDC shares cannot be marketed satisfactorily under these conditions. The parts of the Bill referred to are Sections 16 to 25 and Schedule I, which relate to the acquisition, holding, voting, transfer and redemption of shares. These impediments to marketability are discussed hereunder in broad terms. More detailed comment may be found in the Appendix.

Stock exchanges are very sensitive about the liquidity of the market place. This sensitivity arises particularly from the fact that, over the years, a great deal of experience has been gained in respect to the transfer of ownership of securities. This is but one in the long chain of events that must take place whenever there is buying or selling of a security. Nevertheless, to the extent that there are any special thresholds against movement of securities from seller to buyer, the basic liquidity of the process of investing is inevitably interfered with.

One example is the series of problems arising from the U.S. Interest Equalization Tax, which resulted in considerable

confusion in the market place because of certain exemptions regarding Canadian securities. The unfortunate broker, in going into the market place to purchase shares for clients or to sell shares on behalf of clients, had to know that there were some shares subject to tax and others which were not; also, there was a third class wherein applicability of the tax depended on whether the vendor was a U.S. citizen. In the midst of this confusion, the broker would be confronted with the dilemma as to whether or not he had a contingent liability in respect to making good delivery to his clients. Indeed, there have been numerous cases of legal action against brokers who were unable to make satisfactory delivery accompanied by the paper documentation.

Clearly, the various requirements to achieve such particular government objectives can interfere drastically with liquidity of the market place. The result has been hesitancy on the part of buyers and sellers to become involved in situations wherein there may be a contingent liability. Likewise, there is hesitancy on the part of a broker to attempt to service securities for which there are special provisions.

It is a requirement of the Bank Act and various other special acts already referred to that there may be no greater than a 25% ownership of such shares by non-residents. Moreover, other classes of companies under the Canada Corporations Act may now elect to become "constrained share companies". This restriction has never become a problem to the brokerage community, yet it has resulted in some concern as to responsibility to inform non-resident clients in the event that they may not be entitled to purchase such shares.

Perhaps fortunately, since this type of legislation has been introduced, there has been a decline in the percentage of such shares owned by non-residents. This trend has been confirmed by a recent survey of the Canadian Bankers Association. It would seem that this has been brought about by pressure on the part of brokers and other advisers of U.S. investors, together with a general acknowledgement of the situation.

It is submitted that impediments to market liquidity and marketability similar to those discussed above will be inappropriately high in the case of CDC shares, if the present provisions of Bill C-219 are enacted.

In order to obviate many of these problems, it is suggested that the CDC, itself, be declared a "constrained share company", in accordance with Section 38A of the Canada Corporations Act and related Schedule. Alternatively, a special provision could make the CDC subject to the Investment Companies Act and, in particular, Sections 10 to 14 thereof. In the former case, the constrained-class of shareholder could be "non-resident" and "non-Canadian", and the gross prescribed percentage of shares permitted to be held by such class could be 25%, or as little as perhaps 15%. If subject to the Investment Companies Act, the constrained-class would be "non-resident" only and the limit of such holdings 25%.

Irrespective of how the above matters are treated subsequent to the issue of shares to the public, the actual issues could still be restricted to residents of Canada or Canadian citizens.

The main purpose of this proposal is to provide a certain leeway, or cushion, within which the market for CDC shares could function with reasonable liquidity and effectiveness. It would obviate the need for special scrutiny and concern on the part of brokers in the case of practically every single transaction; it would eliminate the certainty of large numbers of shares being held "illegally" and the myriad problems relating thereto; and it would, for the most part, eliminate the requirement for "declarations" by shareholders, as well as enforced sales and redemptions perhaps at inequitable prices. In addition, transferability of shares would cease to be a matter of concern until the gross prescribed percentage is approached—and this may never occur.

Recommendations

—That the CDC be declared a "constrained share company", in accordance with Section 38A of the Canada Corporations Act and related Schedule.

—In such event, that the constrained-class be preferably only "non-resident", or both "non-resident" and "non-citizen", and that the gross prescribed percentage of shares permitted to be held by such class be preferably 25%, but no less than 15%.

—That actual public issues of shares be restricted to residents of Canada or Canadian citizens.

GOVERNMENT PARTICIPATION

The government proposes to subscribe for common shares of the CDC up to a limit of $100 million in the first year and $75 million in each of the next two years. In addition, it is expected to acquire common shares or other securities in exchange for the sale of Crown companies to the CDC. Only a single class of common shares is mentioned in the Bill.

However, there is provision for redemption of shares issued to the government at net asset value, but generally at no less a price than the average price paid. It has been proposed that shares so redeemed will be re-issued to the general public. The ultimate aim appears to be reduction of government holdings of voting shares to no more than 10% of the total.

All of the above provisions are covered by sections 35 to 42 and Schedule II.

It is submitted that the procedures of redeeming government-held shares at net asset value, or even original cost, and their re-issue at a price that must be acceptable to the market could well result in dilution of the public shareholder's equity. Clearly, the government is anticipating that the market value of these shares will attain at least equality with, or a premium over, net asset value. But this has not been the case with the shares of other Canadian closed-end investment and holding companies. Ability of the CDC to purchase its own shares in the market is not guaranteed to eliminate such a discount, particularly in the event of only mediocre earnings performance. It may be noted in this connection that shares of the Quebec General Investment Corporation, which were issued at a price of $10, were traded recently at $4 per share.

We also contend that it is inequitable to provide, as the Bill does, for redemption of government-held shares at possibly higher prices than those held by elements of the general public. Once a market has been established, there is only one measure of value that is fair for all purposes: market value.

Quite possibly the government's aims with regard to the CDC will be attained. However, this may take some time. In the meantime, it might be difficult to justify the issuance of its shares to the public by the means provided in the Bill. It is

suggested that the following alternative method be used and that this might result in considerably improved flexibility of action, as well as equity.

The Chamber proposes that a special class of convertible, redeemable, deferred-dividend common shares be issued to the government, comprising the $250 million worth to be acquired directly within the first three years. Such a class of shares was issued initially by the GIC to the Province of Quebec. This should be considered to be basically entrepreneurial investment, or development capital, and a return thereon might not normally be expected for some time. These shares would be redeemable at par and would qualify for dividends when converted into ordinary common shares. Clearly, redemption and re-issuance to the public would be justified as soon as CDC performance reached the stage that the market would absorb these shares at, or above, the redemption price. Alternatively, the government might choose to convert these shares at an appropriate time into common shares; these eventually could be distributed to the public by way of secondary offerings through investment dealers across the country, rather than by the redemption/re-issue route. Such offerings would be to residents of Canada or Canadian citizens only.

As to the shares to be issued to the government in exchange for shares of Crown companies, these could be redeemable convertible preferreds, assuring immediate dividend payments to the government, or a combination of preferred and ordinary common shares. These common shares, also, could be distributed to the public through secondary offerings at such times, and in such amounts, as the directors consider appropriate.

With regard to Schedule II, which covers the determination of net asset value of common shares, the Chamber contends that this measure of value is of little more than academic interest and should never be used for setting redemption prices other than in the case of mutual funds. Admittedly, it is a useful general measure of the consolidated value of a closed-end fund portfolio, which can be compared with market value to assess investor confidence in such a company's shares. There may be reasons for determining net asset value on a monthly basis, at the most, for a CDC type of

enterprise, but certainly not on each business day. Such formal calculation might well mislead the public into thinking that they are buying shares in a mutual fund, with which the CDC should in no way be confused.

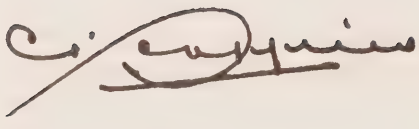
Recommendations

–That the $250 million worth of shares to be purchased directly by the government within the first three years be a special class of convertible, redeemable, deferred-dividend common shares.

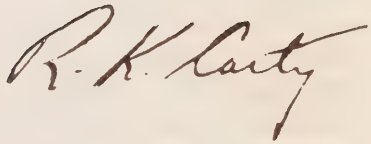
—That, when the CDC has achieved a proven performance record, the above class of shares be redeemed, converted into ordinary common shares, and re-issued to the public at an acceptable price.

—That other common shares acquired by the government, in exchange for the sale of Crown companies, be distributed to the public by way of secondary offerings at appropriate times.

—That net asset value not be used as a measure of redemption price and that it be determined no more often than on a monthly basis.



C. H. Scoffield,
General Manager



R. K. Carty,
Chairman Executive Council

APPENDIX

Comments on Some Technical Aspects of Bill C-219

S. 3(1)(e)

The definition of "resident of Canada" involves one of the most important concepts of the Act because it is involved, to an extent, in problems of share ownership and of qualification for director. The term is defined in Schedule I (S. 4(1)(d)) as any person that is not a non-resident, and "non-resident" is defined in the same schedule. While by S. 30, the Schedules may be changed by by-law passed by the Board and sanctioned by at least two-thirds of the votes at a special meeting of the shareholders and confirmed by letters patent (and it should be noted that such letters patent by S. 30(3) do not become effective until affirmed by both Houses of Parliament), nevertheless, under Section 20(3), determination as to when a person "is not ordinarily resident in Canada" is subject to rules which may be prescribed by the Board.

S. 3(1)(f)

It should be noted that the definition of "securities" is narrower than the similar definition in the Canada Corporations Act (S. 3(1)(m)), in that it does not include "shares of the company" which are defined separately. Not only is this most unusual but, in our view, it can only lead to unnecessary confusion.

S. 11

It should be noted that this section, unlike S. 84 of the Canada Corporations Act, provides for a varying number of directors within a range. We believe that this is an excellent concept. We are, however, concerned with the wording of S. 11 which may be open to the interpretation that, upon a by-law passed by the directors and sanctioned by the shareholders, the affairs of the company could be managed by other than a Board of Directors. This seems to be simply a matter of wording and is not included in the intent.

S. 12(3)

This sub-section is imperative and could under (probably unusual) conditions create a problem. For example, assume a Board of 18 directors of whom eight are non-residents and a Board meeting at which only a quorum (11) is present. In the admittedly unlikely event that two of the Canadian resident directors (without notice to the Board) die or become bankrupt, the validity of actions taken by the Board at such a meeting would be seriously open to question. Alteration by the Board of the rules determining when a person is not ordinarily resident of Canada might conceivably disqualify one or more directors.

S. 12(7)

The last part of this sub-section permits the directors (by a four-fifths vote) to remove and replace any director or directors. This is a most unusual provision and would seem to run counter to the ordinary principle of corporation law that directors are elected by shareholders and are answerable, not to their fellow directors, but to the shareholders.

S. 13(4)

It is not clear why it is felt necessary to have this sub-section since it would seem simply to re-enact S. 94 of the Canada Corporations Act which is, in any event, applicable by virtue of S. 26 and 27 of the Act.

S. 14

This section is far more detailed than S. 92 of the Canada Corporations Act and one wonders whether, in fact, it is necessary, e.g. to enact sub-sections (f) and (g). Sub-section (h) seems to require the giving of security, though the corresponding sub-section (d) of Section 92 of the Canada Corporations Act refers to "security, if any".

S. 15

This section, with very minor changes, is identical with S. 63 of the Canada Corporations Act.

S. 16(2)

It should be noted that the provision of this sub-section is obligatory upon the shareholder. The sanction is, of course, found in sub-section (3).

S. 16(3)

The declaration to be submitted by the shareholder must be "satisfactory to the Board". It would seem that this requirement may be unfair and not capable of measurement. Surely, all that should be required is that the declaration comply reasonably with the provisions of sub-section (2). Furthermore, such declaration must be submitted "within thirty days of the day that the declaration was requested by the Board". It would seem more equitable in view of the sanction that this should refer, rather, to a period after receipt by the shareholder of notice that such a declaration is requested.

S. 17(1)

Unlike S. 107 of the Canada Corporations Act, this sub-section does not require that the "calling" of shareholders be recorded. However, S. 107 of the Canada Corporations Act, not having been specifically excluded, remains applicable to the CDC.

S. 17(3)

The provisions of this sub-section are not as broad as those of S. 109 of the Canada Corporations Act which permits inspection by "shareholders and creditors of the company and their personal representatives" and "any judgement creditor" and the making of extracts. S. 109 of the Canada Corporations Act, also, does not appear to have been specifically excluded.

S. 17(6)

The time limit of sixty days for presentation for transfer of shares does not appear to have any parallel time limit in the Canada Corporations Act, where it might have been expected among the special provisions applicable to constrained share companies. The sanction for failure to adhere to such time limit appears to be withdrawal of the right to vote the shares and possibly vulnerability to redemption of the shares. This is an example of what we consider to be undesirable diversity in legislation.

S. 19(4)

This sub-section confers a unilateral right on the company to void any proceeding, matter or thing concerned with a general meeting of shareholders if even one share "held" or deemed to be held in contravention of the charter of the company exercises a voting right at that meeting. Almost

inevitably, this will occur under the present provisions of the Bill. Furthermore, this right of avoidance is exercisable at any time within one year from the date of commencement of the relevant meeting. There are similar provisions in the Schedule relating to constrained-share companies in the Canada Corporations Act, as well as in other special acts wherein non-resident ownership is limited. However, in such cases, there may be little likelihood of this problem arising.

S. 20(1)

Presumably the sanction in respect of this provision is the inability to vote the shares and the vulnerability of the shares to redemption. It is not clear what is meant by "hold voting shares". The reference to holding shares applies also to sub-section (2). Clearly, these conditions would tend to prevent these shares from being a "widows and orphans" investment because of estate problems should the shares devolve to persons in the proscribed class.

S. 20(3)

Reference to this provision has already been made in dealing with S. 3(1)(e). Theoretically, this provision would permit the Board to disenfranchise shareholders for some reasons and also, perhaps, to disqualify directors.

S. 21(1)

This provision permits, but does not require, the company to notify persons holding shares in contravention of the charter to dispose of such shares within a period of not less than sixty days and further permits, but again does not require, the company if the shares are not disposed of to redeem the shares for cancellation. Surely the company should be **required** to so notify such persons within a given number of days after it has discovered that shares are held in contravention of the charter. As the provision stands, it permits unfair discrimination among such persons.

S. 21(2)

This sub-section provides the mode of redemption and is again permissive. It is our contention that fair treatment of such shareholders can only be achieved by eliminating the redemption option and requiring the company to dispose of such shares through the market.

S. 21(3)

Once the notice and the deposit of the redemption price have been effected in accordance with S. 21(2), the share certificate or certificates representing the shares redeemed no longer have any validity. Since this differs from the provisions of the Canada Corporations Act, it may occasion problems to stock exchanges among others.

S. 21(5)

This sub-section converts the option of the company to redeem shares to an obligation to redeem after a period of ten years or such lesser period as may be fixed by the by-laws. Reference is made to our comments with respect to S. 21(1) & (2).

S. 21(6)

This sub-section provides for establishing the redemption price of voting shares. Apart from the equities of the situation, it should be noted that in the case of a common share, the redemption price is the lesser of: 1) the issue price on the initial issue of shares, initial issue being defined in S. 9(4); and 2) the market price. Since the issue price on the initial issue could conceivably be less than the issue price on subsequent issues, it is clear that the unfortunate holder of shares of a subsequent issue may, on redemption, receive somewhat less than he paid for the shares. With respect to sub-paragraph (ii), reference is made to "the principal stock exchange". This may cause some problems since S. 5 of Schedule II may allow for more than one such exchange. Again, it is our contention that sale through the market rather than redemption avoids the problem.

S. 26(1)

It is suggested that the words "with such modification as circumstances require" should be deleted as uncertain, vague and nebulous.

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